# **REMARKS**

Applicant respectfully requests reconsideration and allowance of the subject application. Applicant believes this communication to be fully responsive to all of the issues raised in the 3/5/07 Final Office Action.

## **Communication with the Examiner**

Applicant appreciates Examiner Pannala's willingness to discuss the present application with Applicant's Attorney, Paul Mitchell, on 6/1/07. The rejections were discussed. Examiner Pannala suggested claim amendments for overcoming the §101 and §112 rejections. The Examiner's suggestions are reflected in the present communication. No agreement was reached for overcoming the rejections based upon the art of record though the Examiner agreed to further evaluate the teachings of said art.

## **§ 101 Rejections**

The Office Action rejects claims 1-15 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Without conceding the propriety of the stated rejection, and only to expedite prosecution of this application, Applicant has amended independent claims 1 and 11 as suggested by the Office. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

## § 101 Rejections

The Office Action rejects claims 1 and 11 under 35 U.S.C. § 112 as allegedly being indefinite. Without conceding the propriety of the stated rejection, and only to expedite prosecution of this application, Applicant has amended claims 1 and 11 as suggested by the Office. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

## § 103 Rejections

The Office Action rejects claims 1-15 under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 6,665,729 to Walker, et al. (hereinafter, "Walker") in view of U.S. Patent Publication No. 2004/0001514 to Wookey, et al. (hereinafter, "Wookey").

**Claim 1** is directed to a process and recites:
- determining a size of a data structure;
- selecting a data streaming protocol when the size exceeds a predetermined limit;
- selecting a buffered data protocol otherwise;
- sending data of the data structure consistent with the selected protocol.

Applicant submits that the Office has failed to establish a §103 rejection of claim 1 for at least two reasons. First, the art of record fails to describe, teach, or

suggest all of the recited claim elements. Second, the Office offers insufficient motivation for the Office's proposed combination of Walker and Wookey.

In looking for the recited claim elements, the Office notes that Walker does not teach all of the recited claim elements. The Office then looks to Wookey to teach the missing elements. However, Applicant respectfully notes that the Office has mischaracterized the recited claim elements of: selecting a data streaming protocol when the size exceeds a predetermined limit; selecting a buffered data protocol otherwise; sending data of the data structure consistent with the selected protocol in making out the rejection. For instance, the Office states that Walker does not describe "bulk data protocol". The Office then points to paragraph 297 of Wookey as teaching "bulk data protocol". However, bulk data protocol is not the missing claim element(s). Applicant respectfully submits that neither paragraph 297 specifically nor the remainder of Wookey (nor Walker) teach the selecting or sending elements recited in claim 1. Upon careful examination of the references, Applicant respectfully requests that the Office identify with particularity where the recited selecting and sending elements are taught by the art of record. Lacking such, Applicant respectfully requests that the §103 rejection be withdrawn.

Further, the record contains insufficient motivation in that the proposed combination renders the primary reference (Walker) inoperable. Walker describes reducing system delays for whatever protocol is employed on the system. Specifically, in relation to Col. 5 and Fig. 4, Walker describes: receiving a packet, and examining a packet header to determine a protocol employed by the server. If a streaming protocol is employed by the server no further action is taken (i.e., the client acts in a traditional manner). If a transaction based protocol is being

employed the client takes actions to decrease latency in receiving a last packet of a set of packets. In no instance, does Walker describe selecting a protocol at all. In fact, the overall purpose of Walker is to decrease network latency with whatever protocol is being utilized. Accordingly, Walker does not teach any protocol selecting process. Even considering arguendo that Wookey described the selection element; the Office's proposed combination would defeat Walker's described invention of decreasing network latency with whatever protocol comes down the line. At the very least, Walker teaches directly away from the proposed combination. For these reasons, insufficient motivation exists in the record for the Office's proposed combination. Accordingly, Applicant respectfully requests that the §103 rejection of claim 1 be withdrawn.

**Claims 2-10** depend from allowable claim 1. These claims are also allowable for their own recited features which, in combination with those recited in claim 1, are neither disclosed nor suggested by the references cited and applied by the Office.

**Claim 11** is directed to a system for handling messages. Applicant submits that the Office has failed to establish a §103 rejection of claim 11 at least for the reasons described above in relation to claim 1. Accordingly, Applicant respectfully requests that the §103 rejection of claim 11 be withdrawn.

**Claims 12-15** depend from allowable claim 11. These claims are also allowable for their own recited features which, in combination with those recited in claim 11, are neither disclosed nor suggested by the references cited and applied by the Office.

## Conclusion

Applicant respectfully requests reconsideration and withdrawal of the rejections of the pending claims. If personal discussion would advance prosecution of this application, the Office is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

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Dated: 6/4/07

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